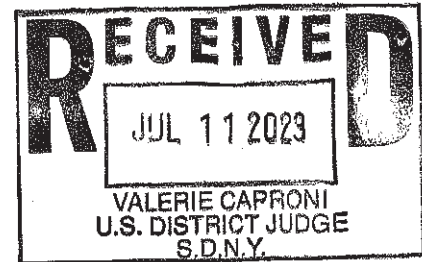


July 6<sup>th</sup>, 2023



The Honorable Valerie E. Caproni  
United States District Court Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: United States v. Frank DiTomasso, Case No. 14-cr-160 (VEC)

Dear Honorable Caproni:

I am writing to you in response to your recent decision (copy enclosed) of my request for a re-opening of Frank's case.

I did not say or try to convey in any way that Frank was not able to reach out on his own behalf. However, since I take full responsibility for the crime, I was only seeking justice for Frank.

I want to mention again that while Frank was in court for a pre-trial hearing, I spoke with Lee about my sole involvement and Lee proceeded to ask the Federal Prosecutor to have an attorney assigned to me. She then called the court clerk who assigned an attorney. This would not have been done if I had not spoken to Lee pre-trial about my sole involvement.

I am on social security and cannot afford to provide myself with legal assistance. I am asking the court to please help me by assigning an attorney who can help me to get justice for Frank.

I respectfully ask for your consideration in this matter.

Thank you,

Robert Marcus  
2252 1<sup>st</sup> Avenue 3A  
New York, NY 10029  
646-271-7850

Application DENIED. To the extent Mr. Marcus seeks to file a habeas petition to vacate or set aside Mr. DiTomasso's sentence pursuant to 28 U.S.C. § 2255, he bears the burden of showing that "the real party in interest cannot appear on his own behalf to prosecute the action." *N.Y. ex. rel. Fox v. Fed. Bureau of Prisons*, No. 08-CV-4816 (SLT), 2008 WL 5191843, at \*3 (E.D.N.Y. Dec. 5, 2008) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990)). Mr. Marcus has provided no explanation as to why Mr. DiTomasso cannot appear on his own behalf to challenge his incarceration.

Indeed, Mr. DiTomasso already filed a habeas petition based on substantially the same grounds advanced in Mr. Marcus's letter. His petition was denied by this Court and by the Second Circuit on appeal. *See* Opinion & Order, Dkt. 179; Mandate, Dkt. 181.

The Clerk of Court is respectfully directed to mail a copy of this order to Mr. Marcus at 2252 1st Avenue #3A, New York, NY 10029.


SO ORDERED.


 06/23/2023

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE

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**U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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